

C-4936

**AMENDMENT NO. ONE TO
ON-CALL PROFESSIONAL SERVICES AGREEMENT WITH
VCA CODE GROUP FOR
BUILDING INSPECTION AND PLAN REVIEW SERVICES**

THIS AMENDMENT NO. ONE TO PROFESSIONAL SERVICES AGREEMENT ("Amendment No. One"), is entered into as of this 21st day of November, 2011, by and between the CITY OF NEWPORT BEACH, a California Municipal Corporation ("City"), and VCA Code Group a California corporation whose address is 2200 West Orangewood Avenue, Suite 155, Orange, California 92868 ("Consultant"), and is made with reference to the following:

RECITALS:

- A. On September 1, 2011, City and Consultant entered into a Professional Services Agreement ("Agreement") to perform on-call building inspection and plan review services on an as-needed basis ("Project").
- B. City desires to enter into this Amendment No. One to replace Exhibit B to the Agreement.
- C. City and Consultant mutually desire to amend the agreement, as provided below.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. COMPENSATION

The Fee Schedule attached to the Agreement as Exhibit B shall be replaced with the Fee Schedule attached hereto as Exhibit A and incorporated herein by reference.

2. INTEGRATED CONTRACT

Except as expressly modified herein, all other provisions, terms, and covenants set forth in the Agreement shall remain unchanged and shall be in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. One on the dates written below.

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**

Date: 11/7/11

By: [Signature]
Aaron G. Harp
City Attorney

198
11/7

**CITY OF NEWPORT BEACH,
A California municipal corporation**

Date: 11/10/2011

By: [Signature]
Dana Smith
Assistant City Manager

ATTEST:

Date: 11-21-11

By: [Signature]
Leilani I. Brown
City Clerk



**CONSULTANT: VCA Code Group, a
California corporation**

Date: 11/17/11

By: [Signature]
Tom Van Dorpe
President

Date: 11/17/11

By: [Signature]
Robert Chou
Vice President / Treasurer

Attachments: Exhibit A - Fee Schedule

EXHIBIT A

**EXHIBIT B
FEE SCHEDULE**

Full Plan Check – Beginning with initial plan check to final approval.

Percentage of Fees Collected.....50%
Hourly Rate (if no fees are collected)\$75.00

Partial Plan Check

Percentage of Fees Collected50%
Hourly Rate (if no fees are collected)\$75.00

Client Consultation at City Hall

Hourly Rate\$75.00

Mileage Reimbursement\$0.51/mile

Building Official

Hourly Rate\$135.00

Building Inspector

Hourly Rate\$45.00 - \$55.00

Permit Counter Technician

Hourly Rate\$35.00

**ON-CALL PROFESSIONAL SERVICES AGREEMENT WITH
VCA CODE GROUP FOR
BUILDING INSPECTION & PLAN REVIEW SERVICES**

THIS ON-CALL PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into as of this 1st day of September, 2011, by and between the CITY OF NEWPORT BEACH, a Municipal Corporation ("City"), and VCA CODE GROUP, a California corporation whose address is 2200 West Oranewood Avenue, Suite 155, Orange, California, 92868 ("Consultant"), and is made with reference to the following:

RECITALS

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.
- B. City has a need for on-call assistance for building inspection and plan review services.
- C. City desires to engage Consultant to perform on-call building inspection & plan review services on an as need basis ("Project").
- D. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement.
- E. The principal member of Consultant for purposes of Project shall be Charles Russell.
- F. City has solicited and received a proposal from Consultant, has reviewed the previous experience and evaluated the expertise of Consultant, and desires to retain Consultant to render professional services under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, it is mutually agreed by and between the undersigned Parties as follows:

1. TERM

The term of this Agreement shall commence on the above written date, and shall terminate on June 30, 2012, unless terminated earlier as set forth herein.

2. SERVICES TO BE PERFORMED

2.1 Consultant shall provide "On-Call" plan review services as described in the Scope of Services attached hereto as Exhibit A and incorporated herein by reference ("Services"). Upon verbal or written request from the Project Administrator (as defined below in Section 6), Consultant shall provide a letter proposal for Services requested by

the City (hereinafter referred to as the "Letter Proposal"). The Letter Proposal shall include the following:

2.1.1 A detailed description of the Services to be provided;

2.1.2 The position of each person to be assigned to perform the Services, and the name of the individuals to be assigned, if available;

2.1.3 The estimated number of hours and cost to complete the Services;
and

2.1.4 The time needed to finish the specific project.

2.2 No Services shall be provided until the Project Administrator has provided written acceptance of the Letter Proposal. Once authorized to proceed, Consultant shall diligently perform the duties in the approved Letter Proposal.

3. TIME OF PERFORMANCE

3.1 Time is of the essence in the performance of Services under this Agreement and the Services shall be performed to completion in a diligent and timely manner. The failure by Consultant to perform the Services in a diligent and timely manner may result in termination of this Agreement by City.

3.1.1 Notwithstanding the foregoing, Consultant shall not be responsible for delays due to causes beyond Consultant's reasonable control. However, in the case of any such delay in the Services to be provided for the Project, each party hereby agrees to provide notice to the other party so that all delays can be addressed.

3.1.2 Consultant shall submit all requests for extensions of time for performance in writing to the Project Administrator not later than ten (10) calendar days after the start of the condition that purportedly causes a delay. The Project Administrator shall review all such requests and may grant reasonable time extensions for unforeseeable delays that are beyond Consultant's control.

3.1.3 For all time periods not specifically set forth herein, Consultant shall respond in the most expedient and appropriate manner under the circumstances, by telephone, fax, hand-delivery or mail.

4. COMPENSATION TO CONSULTANT

4.1 City shall pay Consultant for the Services on a time and expense not-to-exceed basis, in accordance with the provisions of this Section and the Schedule of Billing Rates attached hereto as Exhibit B and incorporated herein by reference.

4.2 No rate changes shall be made during the term of this Agreement without the prior written approval of the City. Consultant's compensation for Services performed in accordance with this Agreement, including all reimbursable items and sub-

consultant fees, shall not exceed the fees identified in the Letter Proposal, as approved by the Project Administrator. Total compensation paid to Consultant during the term of this Agreement shall not exceed **One Hundred Thousand Dollars and 00/100 (\$100,000.00)** without written amendment to the Agreement.

4.2.1 Consultant shall submit monthly invoices to City describing the work performed the preceding month. Consultant's bills shall include the name of the person and/or classification of employee who performed the work, a brief description of the Services performed and/or the specific task in the letter proposal to which it relates, the date the Services were performed, the number of hours spent on all work billed on an hourly basis, and a description of any reimbursable expenditures. City shall pay Consultant no later than thirty (30) days after approval of the monthly invoice by City staff.

4.2.2 City shall reimburse Consultant only for those costs or expenses specifically approved in the Letter Proposal. Unless otherwise approved, such costs shall be limited and include nothing more than the following costs incurred by Consultant:

4.2.2.1 The actual costs of sub-consultants for performance of any of the Services that Consultant agrees to render pursuant to this Agreement and the Letter Proposal, which have been approved in advance by City and awarded in accordance with this Agreement.

4.2.2.2 Approved reproduction charges.

4.2.2.3 Actual costs and/or other costs and/or payments specifically authorized in advance in writing and incurred by Consultant in the performance of this Agreement.

4.2.3 Consultant shall not receive any compensation for Extra Work without the prior written authorization of City. As used herein, "Extra Work" means any work that is determined by City to be necessary for the proper completion of the Project, but which is not included within the Letter Proposal and which the parties did not reasonably anticipate would be necessary. Compensation for any authorized Extra Work shall be paid in accordance with the Schedule of Billing Rates set forth in Exhibit B.

5. PROJECT MANAGER

5.1 Consultant shall designate a Project Manager, who shall coordinate all phases of the Project. This Project Manager shall be available to City at all reasonable times during the Agreement term. Consultant has designated Charles Russell, Vice-President to be its Project Manager. Consultant shall not remove or reassign the Project Manager or any personnel listed in Exhibit A or assign any new or replacement personnel to the Project without the prior written consent of City. City's approval shall

not be unreasonably withheld with respect to the removal or assignment of non-key personnel.

5.2 Consultant, at the sole discretion of City, shall remove from the Project any of its personnel assigned to the performance of Services upon written request of City. Consultant warrants that it will continuously furnish the necessary personnel to complete the Project on a timely basis as contemplated by this Agreement.

5.3 Consultant is performing inspection Services for City, therefore the Project Manager and any other assigned staff shall be equipped with a cellular phone to communicate with City staff. Consultant's cellular phone number will be provided to City.

6. ADMINISTRATION

This Agreement will be administered by the City's Community Development Department. Seimone Jurlis, Building Manager, or his designee, shall be the Project Administrator and shall have the authority to act for City under this Agreement. The Project Administrator or an authorized representative shall represent City in all matters pertaining to the Services to be rendered pursuant to this Agreement.

7. CITY'S RESPONSIBILITIES

7.1 In order to assist Consultant in the execution of its responsibilities under this Agreement, City agrees to, where applicable:

7.1.1 Provide access to, and upon request of Consultant, one copy of all existing relevant information on file at City. City will provide all such materials in a timely manner so as not to cause delays in Consultant's work schedule.

7.1.2 Provide usable life of facilities criteria and information with regards to new facilities or facilities to be rehabilitated.

8. STANDARD OF CARE

8.1 All of the Services shall be performed by Consultant or under Consultant's supervision. Consultant represents that it possesses the professional and technical personnel required to perform the Services required by this Agreement, and that it will perform all Services in a manner commensurate with community professional standards. All Services shall be performed by qualified and experienced personnel who are not employed by City, nor have any contractual relationship with City. By delivery of completed work, Consultant certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws and the professional standard of care.

8.2 Consultant represents and warrants to City that it has or shall obtain all licenses, permits, qualifications, insurance and approvals of whatsoever nature, that are legally required of Consultant to practice its profession. Consultant further represents

and warrants to City that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any and all licenses, permits, insurance and other approvals that are legally required of Consultant to practice its profession. Consultant shall maintain a City of Newport Beach business license during the term of this Agreement.

8.3 Consultant shall not be responsible for delay, nor shall Consultant be responsible for damages or be in default or deemed to be in default by reason of strikes, lockouts, accidents, or acts of God, or the failure of City to furnish timely information or to approve or disapprove Consultant's work promptly, or delay or faulty performance by City, contractors, or governmental agencies.

9. HOLD HARMLESS

9.1 To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers and employees (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to the negligence, recklessness, or willful misconduct of the Consultant or the acts or omissions of its principals, officers, agents, employees, vendors, suppliers, consultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them.

9.2 Notwithstanding the foregoing, nothing herein shall be construed to require Consultant to indemnify the Indemnified Parties from any Claim arising from the sole negligence, active negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorney's fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Consultant.

10. INDEPENDENT CONTRACTOR

It is understood that City retains Consultant on an independent contractor basis and Consultant is not an agent or employee of City. The manner and means of conducting the work are under the control of Consultant, except to the extent they are limited by statute, rule or regulation and the expressed terms of this Agreement. Nothing in this Agreement shall be deemed to constitute approval for Consultant or any of Consultant's employees or agents, to be the agents or employees of City. Consultant shall have the responsibility for and control over the means of performing the work, provided that Consultant is in compliance with the terms of this Agreement. Anything in this Agreement that may appear to give City the right to direct Consultant as to the details of

the performance or to exercise a measure of control over Consultant shall mean only that Consultant shall follow the desires of City with respect to the results of the Services.

11. COOPERATION

Consultant agrees to work closely and cooperate fully with City's designated Project Administrator and any other agencies that may have jurisdiction or interest in the work to be performed. City agrees to cooperate with the Consultant on the Project.

12. CITY POLICY

Consultant shall discuss and review all matters relating to policy and project direction with City's Project Administrator in advance of all critical decision points in order to ensure the Project proceeds in a manner consistent with City goals and policies.

13. PROGRESS

Consultant is responsible for keeping the Project Administrator and/or his/her duly authorized designee informed on a regular basis regarding the status and progress of the work, activities performed and planned, and any meetings that have been scheduled or are desired.

14. INSURANCE

14.1 Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City.

14.2 Proof of Insurance. Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this contract. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

14.2.1 Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by Consultant, his agents, representatives, employees or sub-consultants. The cost of such insurance shall be included in Consultant's bid.

14.3 Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the

latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

14.4 Coverage Requirements.

14.4.1 Workers' Compensation Coverage. Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least one million dollars (\$1,000,000)) for Consultant's employees in accordance with the laws of the State of California, Section 3700 of the Labor Code. In addition, Consultant shall require each subconsultant to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California, Section 3700 for all of the sub-consultant's employees.

14.4.2 Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by City at least thirty (30) calendar days (ten (10) calendar days written notice of non-payment of premium) prior to such change.

14.4.3 Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees and volunteers.

14.5 General Liability Coverage. Consultant shall maintain commercial general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability.

14.6 Automobile Liability Coverage. Consultant shall maintain automobile insurance covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit for each accident.

14.7 Professional Liability (Errors & Omissions) Coverage. Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of one million dollars (\$1,000,000) limit per claim and in the aggregate.

14.8 Other Insurance Provisions or Requirements. The policies are to contain, or be endorsed to contain, the following provisions:

14.8.1 Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its sub-consultants.

14.8.2 Enforcement of Contract Provisions. Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

14.8.3 Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

14.8.4 Notice of Cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide to City with thirty (30) days notice of cancellation (except for nonpayment for which ten (10) days notice is required) or nonrenewal of coverage for each required coverage.

14.8.5 Timely Notice of Claims. Consultant shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement.

14.8.6 Additional Insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.

15. PROHIBITION AGAINST ASSIGNMENTS AND TRANSFERS

Except as specifically authorized under this Agreement, the Services to be provided under this Agreement shall not be assigned, transferred contracted or subcontracted out without the prior written approval of City. Any of the following shall be construed as an assignment: The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Consultant, or of the interest of any general partner or joint venturer or syndicate member or cotenant if Consultant is a partnership or joint-venture or syndicate or cotenancy, which shall result in changing the control of Consultant. Control means fifty percent (50%) or more of the voting power, or twenty-five percent (25%) or more of the assets of the corporation, partnership or joint-venture.

16. SUBCONTRACTING

The parties recognize that a substantial inducement to City for entering into this Agreement is the professional reputation, experience and competence of Consultant. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the express written consent of City. Consultant shall not subcontract any portion of the work to be performed under this Agreement without the written authorization of City.

17. OWNERSHIP OF DOCUMENTS

17.1 Each and every report, draft, map, record, plan, document and other writing produced (hereinafter "Documents"), prepared or caused to be prepared by Consultant, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Consultant or any other party. Consultant shall, at Consultant's expense, provide such Documents to City upon written request.

17.2 Documents, including drawings and specifications, prepared by Consultant pursuant to this Agreement are not intended or represented to be suitable for reuse by City or others on any other project. Any use of completed documents for other projects and any use of incomplete documents without specific written authorization from Consultant will be at City's sole risk and without liability to Consultant. Further, any and all liability arising out of changes made to Consultant's deliverables under this Agreement by City or persons other than Consultant is waived against Consultant and City assumes full responsibility for such changes unless City has given Consultant prior notice and has received from Consultant written consent for such changes.

18. COMPUTER DELIVERABLES

All written documents shall be transmitted to City in formats compatible with Microsoft Office and/or viewable with Adobe Acrobat. CADD data delivered to City shall include the professional stamp of the engineer or architect in charge of or responsible for the work. City agrees that Consultant shall not be liable for claims, liabilities or losses arising out of, or connected with (a) the modification or misuse by City, or anyone authorized by City, of CADD data; (b) the decline of accuracy or readability of CADD data due to inappropriate storage conditions or duration; or (c) any use by City, or anyone authorized by City, of CADD data for additions to this Project, for the completion of this Project by others, or for any other Project, excepting only such use as is authorized, in writing, by Consultant. By acceptance of CADD data, City agrees to indemnify Consultant for damages and liability resulting from the modification or misuse of such CADD data. All original drawings shall be submitted to City in the version of AutoCAD used by City in ".dwg" file format on a CD, and should comply with the City's digital submission requirements for Improvement Plans. The City will provide AutoCAD file of City Title Sheets.

19. CONFIDENTIALITY

All Documents, including drafts, preliminary drawings or plans, notes and communications that result from the Services in this Agreement, shall be kept confidential unless City authorizes the release of information.

20. INTELLECTUAL PROPERTY INDEMNITY

The Consultant shall defend and indemnify City, its agents, officers, representatives and employees against liability, including costs, for infringement of any United States' letters patent, trademark, or copyright infringement, including costs, contained in Consultant's drawings and specifications provided under this Agreement.

21. RECORDS

Consultant shall keep records and invoices in connection with the work to be performed under this Agreement. Consultant shall maintain complete and accurate records with respect to the costs incurred under this Agreement and any services, expenditures and disbursements charged to City, for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant to this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City to examine, audit and make transcripts or copies of such records during regular business hours. Consultant shall allow inspection of all work, data, documents, proceedings and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

22. WITHHOLDINGS

City may withhold payment of any disputed sums until satisfaction of the dispute with respect to such payment. Such withholding shall not be deemed to constitute a failure to pay according to the terms of this Agreement. Consultant shall not discontinue work as a result of such withholding. Consultant shall have an immediate right to appeal to the City Manager or his designee with respect to such disputed sums. Consultant shall be entitled to receive interest on any withheld sums at the rate of return that City earned on its investments during the time period, from the date of withholding of any amounts found to have been improperly withheld.

23. ERRORS AND OMISSIONS

In the event of errors or omissions that are due to the negligence or professional inexperience of Consultant which result in expense to City greater than what would have resulted if there were not errors or omissions in the work accomplished by Consultant, the additional design, construction and/or restoration expense shall be borne by Consultant. Nothing in this paragraph is intended to limit City's rights under any other sections of this Agreement.

24. CITY'S RIGHT TO EMPLOY OTHER CONSULTANTS

City reserves the right to employ other Consultants in connection with the Project.

25. CONFLICTS OF INTEREST

The Consultant or its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "Act"), which (1) requires such persons to disclose any financial interest that may foreseeably be materially affected by the work performed under this Agreement, and (2) prohibits such persons from making, or participating in making, decisions that will foreseeably financially affect such interest.

If subject to the Act, Consultant shall conform to all requirements of the Act. Failure to do so constitutes a material breach and is grounds for termination of this Agreement by City. Consultant shall indemnify and hold harmless City for any and all claims for damages resulting from Consultant's violation of this Section.

26. NOTICES

26.1 All notices, demands, requests or approvals to be given under the terms of this Agreement shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided. All notices, demands, requests or approvals from Consultant to City shall be addressed to City at:

Seimone Jurjis, Building Manager
Community Development Department
City of Newport Beach
PO Box 1768
3300 Newport Boulevard
Newport Beach, CA 92658-8915
Phone: (949) 644-3282
Fax: (949) 644-3250

26.2 All notices, demands, requests or approvals from City to Consultant shall be addressed to Consultant at:

Charles Russell, CBO
VCA Code Group
2200 West Orangetown Avenue, Ste. 155
Orange, CA 92868
Phone: (714) 363-4700
Fax: (714) 363-4747

27. TERMINATION

27.1 In the event that either party fails or refuses to perform any of the provisions of this Agreement at the time and in the manner required, that party shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of two (2) calendar days, or if more than two (2) calendar days are

reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within two (2) calendar days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default, the non-defaulting party may terminate the Agreement forthwith by giving to the defaulting party written notice thereof.

27.2 Notwithstanding the above provision, City shall have the right, at its sole discretion and without cause, of terminating this Agreement at any time by giving seven (7) calendar days' prior written notice to Consultant. In the event of termination under this Section, City shall pay Consultant for Services satisfactorily performed and costs incurred up to the effective date of termination for which Consultant has not been previously paid. On the effective date of termination, Consultant shall deliver to City all reports and other information developed or accumulated in the performance of this Agreement, whether in draft or final form.

28. CLAIMS

The Consultant and the City expressly agree that in addition to any claims filing requirements set forth in the Agreement, the Consultant shall be required to file any claim the Consultant may have against the City in strict conformance with the Tort Claims Act (Government Code sections 900 *et seq.*).

29. STANDARD PROVISIONS

29.1 Compliance with all Laws. Consultant shall at its own cost and expense comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted. In addition, all work prepared by Consultant shall conform to applicable City, county, state and federal laws, regulations and permit requirements and be subject to approval of the Project Administrator and City.

29.2 Waiver. A waiver by either party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

29.3 Integrated Contract. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the Parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.

29.4 Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement and the Scope of Services or any other attachments attached hereto, the terms of this Agreement shall govern.

29.5 Amendments. This Agreement may be modified or amended only by a written document executed by both Consultant and City and approved as to form by the City Attorney.

29.6 Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

29.7 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

29.8 Controlling Law And Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange.

29.9 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age.

29.10 No Attorney's Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorney's fees.

29.11 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

**APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY**

Date: 8/15/11

By: [Signature]
Leonie Mulvihill
Assistant City Attorney

*KGA
8/12*

ATTEST: 8.31.11
Date: _____

By: [Signature]
Leilani I. Brown
City Clerk



**CITY OF NEWPORT BEACH,
A California municipal corporation**

Date: 8/16/11

By: [Signature]
Dana Smith
Assistant City Manager

**CONSULTANT: VCA CODE GROUP, a
California corporation**

Date: 8-28-11
29 TD

By: [Signature]
Tom Van Dorpe
President

Date: 8-29-11

By: [Signature]
Robert Chou
Vice President/Treasurer

ATTACHMENTS: EXHIBIT A – SCOPE OF SERVICES
EXHIBIT B – SCHEDULE OF BILLING RATES

EXHIBIT A
SCOPE OF SERVICES

BUILDING PLAN REVIEW SERVICES

1. VCA Code Group will act as an independent agent in supplementing the City's need to provide building inspection services and be required to report on-site at Newport Beach City Hall as directed and perform field inspections as assigned.
2. VCA Code Group shall conduct plan reviews of City's residential, commercial and industrial buildings and structures for compliance with the adopted version of the California Building Code, International Property Maintenance Code, Green Code, Mechanical Code, Plumbing Code, and Electrical Code; The City of Newport Beach Municipal Code; the Accessibility and Energy Conservation requirements as mandated by State Title 24; and all applicable City ordinances. Plan check shall include the initial check, subsequent rechecks, and final review and approval.
3. VCA Code Group shall perform structural design code compliance review and compliance with the submitted Geotechnical Report findings and recommendations and Ground Motion Hazard Analysis findings and recommendations for design and construction.
4. VCA Code Group shall provide written notification to each applicant, consisting of a complete electronically-generated plan check letter which outlines the documents reviewed, instructions to the applicant regarding the processing of documents, and a listing of plan check comments. The plan check comments will refer to appropriate sheets, details or calculations pages and the code section of concern. Comments shall specify the apparent code violation.
5. VCA Code Group shall be available during regular business hours to discuss and clarify plan check issues with applicants, designers, owners and consultants. Resolution of code issues may be performed by telephone, or meetings prior to resubmitting corrected plans and documents.
6. VCA Code Group shall attend meetings as requested.
7. VCA Code Group shall review grading plans to assure conformance with City codes, written policies and standard specifications and compliance with the recommendations, specifications and details contained in the submitted soils report and assure that all appropriate details are shown on the plans. Review quantity calculations to assure accuracy and completeness.

8. VCA Code Group shall review water quality management plans for compliance with regional model WQMP and verify that grading plans incorporate WQMP recommendations.
9. VCA Code Group shall review Erosion Control Plans to verify erosion and sedimentation measures comply with the Best Management Practices listed in the Storm Water Pollution Prevention Plans in compliance with NPDES and WQMP requirements.
10. VCA Code Group may be asked to provide these building plan review Services on site at Newport Beach City Hall at the discretion of the City. In these situations VCA Code Group shall receive direction from designated Community Development staff and be required to provide these services in accordance with the Building Department's normal work schedule. On-site work hours shall be determined by Community Development staff and conveyed to VCA Code Group on a bi-weekly basis.
11. VCA Code Group shall ensure that any consultant team members assigned to this project to provide on-site services have previously been vetted through a Department of Justice (DOJ)-compliant background screening process.
12. VCA Code Group shall ensure that any consultant team members assigned to this project for the purposes of providing building plan review services possess relevant education, experience, and proficiency in all areas pertaining to residential and commercial plan review. Assigned consultant team members must also possess a current and valid International Code Council (ICC) "Building Plans Examiner" certificate; registration as a professional engineer is desirable.
13. Plan Review Turn-Around Schedule

VCA Code Group shall complete each plan check within the time specified below:

First Check: Ten (10) working days from submittal by applicant.
Subsequent Checks: Five (5) working days

SCOPE OF SERVICES: BUILDING INSPECTION SERVICES

1. VCA Code Group shall provide inspections of all requested inspections and re-inspections for compliance with City of Newport Beach Municipal Code and State codes and regulations: California Building Code, International Property Maintenance Code, Plumbing Code, Mechanical Code, Electrical Code, Fire Code, Energy Code, Green Building Standards Code, Disabled Access Regulations, and Title 25; Mobile Home Parks regulations; State Water Resource Control Board regulations related to storm water pollution prevention; Sound Transmission Control regulations; and, locally adopted building ordinances and amendments thereof.
2. VCA Code Group shall maintain all inspection records for all assigned projects, including correction notices and all documentation related to project inspections.
3. VCA Code Group shall coordinate all inspection and re-inspection requests as assigned.
4. VCA Code Group shall coordinate with the Chief Building Inspector, as appropriate, on discretionary decisions or requests for alternate materials.
5. VCA Code Group shall coordinate with the Chief Building Inspector on all Certificate of Occupancy to ensure that all applicable City regulatory agencies have approved the project.
6. VCA Code Group may be asked to report on-site at Newport Beach City Hall at the discretion of the City. In these situations VCA Code Group shall receive direction from designated Community Development staff and be required to provide building inspection services in accordance with the Building Department's normal work schedule. On-site work hours shall be determined by Community Development staff and conveyed to VCA Code Group on a bi-weekly basis.
7. VCA Code Group shall ensure that any consultant team members Assigned to this project to provide on-site services have previously been vetted through a Department of Justice (DOJ)-compliant background screening process.
8. VCA Code Group shall ensure that any consultant team members assigned to this project for the purposes of providing building inspection services possess relevant education, experience, and proficiency in all areas pertaining to building inspections. Assigned consultant team members must also possess ICC certification as a Combination Building Inspector.
9. Once assigned, consultant team members assigned to this project shall not be substituted without approval from the Chief Building Inspector or his/her designee.

EXHIBIT B
FEE SCHEDULE

Full Plan Check – Beginning with initial plan check to final approval.

Percentage of Fees Collected.....50%

Hourly Rate (if no fees are collected)\$75.00

Partial Plan Check

Percentage of Fees Collected50%

Hourly Rate (if no fees are collected)\$75.00

Client Consultation at City Hall

Hourly Rate\$75.00

Mileage Reimbursement\$0.51/mile

Building Official

Hourly Rate\$135.00

Building Inspector

Hourly Rate\$45.00

Permit Counter Technician

Hourly Rate\$35.00

CERTIFICATE OF INSURANCE
CHECKLIST
City of Newport Beach

This checklist is comprised of requirements as outlined by the City of Newport Beach. *

Date Received: 8/26/2011 Dept./Contact Received From: Terresa Moritz
Date Completed: 8/26/2011 Sent to: Joel By: Joel
Company/Person required to have certificate: VCA Code Group

I. GENERAL LIABILITY

- A. INSURANCE COMPANY: Massachusetts Bay Insurance Co.
- B. AM BEST RATING (A- : VII or greater): A: XIV
- C. ADMITTED Company (Must be California Admitted):
Is Company admitted in California? Yes ☒ No ☐
- D. LIMITS (Must be \$1M or greater): What is limit provided? \$1,000,000
- E. PRODUCTS AND COMPLETED OPERATIONS (Must include): Is it included? (completed Operations status does not apply to Waste Haulers) Yes ☒ No ☐
- F. ADDITIONAL INSURED WORDING TO INCLUDE (The City its officers, officials, employees and volunteers): Is it included? Yes ☒ No ☐
- G. PRIMARY & NON-CONTRIBUTORY WORDING (Must be included): Is it included? Yes ☒ No ☐
- H. CAUTION! (Confirm that loss or liability of the named insured is not limited solely by their negligence) Does endorsement include "solely by negligence" wording? Yes ☐ No ☒
- I. NOTIFICATION OF CANCELLATION: Although there is a provision that requires notification of cancellation by certified mail; per Lauren Farley, the City will accept the endeavor wording.

New Acord wording

II. AUTOMOBILE LIABILITY

- A. INSURANCE COMPANY: Allmerica Financial Benefit
- B. AM BEST RATING (A- : VII or greater) A: XIV
- C. ADMITTED COMPANY (Must be California Admitted):
Is Company admitted in California? Yes ☒ No ☐
- D. LIMITS (Must be \$1M min. BI & PD and \$500,000 UM, \$2M min for Waste Haulers):
What are the limits provided? \$1,000,000
- E. PRIMARY & NON-CONTRIBUTORY WORDING (For Waste Haulers only):
Is it included? N/A Yes ☐ No ☐
- F. NOTIFICATION OF CANCELLATION: Although there is a provision that requires notification of cancellation by certified mail; per Lauren Farley, the City will accept the endeavor wording.

New Acord Wording

III. WORKERS' COMPENSATION

- A. INSURANCE COMPANY: Hanover American
- B. AM BEST RATING (A- : VII or greater): A: XIV
- C. LIMITS: _____ Statutory ☒ X
- D. WAIVER OF SUBROGATION (To include): Is it included? Yes ☒ X No ☐

HAVE ALL ABOVE REQUIREMENTS BEEN MET?

Yes ☒ X No ☐

IF NO, WHICH ITEMS NEED TO BE COMPLETED? _____

NOTES:

Approved:



August 26, 2011

Agent of Alliant Insurance Services
Broker of record for the City of Newport Beach

Date

☐ Requires approval/exception/waiver by Risk Management _____ B&B initials

Comments:

Approved:

Risk Management

Date

* Subject to the terms of the contract.